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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

----oo0oo----

BETTY L. FELTER,

Plaintiff and Respondent,

vs.

MARION DEE FELTER,

Defendant and Appellant.

Case No. 15212

----oo0oo----

Appeal from the Judgment of the Seventh Judicial District Court for Carbon County
Honorable Edward Sheya, Judge

----oo0oo----

APPELLANT'S BRIEF

----oo0oo----

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FILED

JUL 26 1977

Clerk, Supreme Court, Utah

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IN THE

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APPELLANT'S BRIEF

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CASES, STATUTES AND AUTHORITIES

Cases:

Statutes:

Footnotes of Authorities:

1. Hetherington, E.M. "Effects of paternal absence on sex-typed behaviors in Negro and white preadolescent males, Journal of Personality and Social Psychology, 1966 4, 87-91.

2. Biller, H.B. Paternal Depriviation, Massachusets: D. C. Heath and Co., 1974.

   Biller H.B. "Father-absence, maternal encouragement, and sex-role development in kindergarten age boys," Child Development, 1969, 539-546.

   Biller, H.B. Father, Child, and Sex Role, Massachusetts: D. C. Heath and Co., 1971

3. Blanchard, R. W. and Biller, H. B. "Father availability and academic performance among third-grade boys," Developmental Psychology, 1971, 4, 301-305.

4. Stolz, L.M., et al. Father Relations of War-Born Children, Stanford: Stanford University Press, 1954.

5. Anderson. R. E. "Where's Dad? Paternal depriviation and delinquency," Archives of General Psychiatry, 1968, 66.

6. Cervantes, L.F. "Family background, primary relationships, and the high school dropout," Journal of Marriage and The Family, 1965, 27, 218-223.

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STATEMENT OF THE NATURE OF THE CASE

This is an action regarding the rights of Appellant to visit his child at specific times and places.

DISPOSITION IN THE LOWER COURT

This matter was heard March 7, 1977, pursuant to an order to show cause in the District Court in and for Carbon County before the Honorable Edward Sheya of the Seventh Judicial District. Judge Sheya denied Appellant's request for extended visitation rights with his son and from that order this appeal is taken.

RELIEF SOUGHT ON APPEAL

Appellant seeks a modification of the order denying extended visitation rights and requests that he be allowed additional visitation.

STATEMENT OF FACTS

Plantiff-Respondent and Defendant-Appellant were divorced on September 27, 1977. One child, Isaac D. Felter,

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was born as issue of the marriage, said child having been born in May of 1974. The decree of divorce provided for reasonable rights of visitation. Subsequent to the divorce, the Respondent moved with the minor child to California where she still resides. Appellant sought clarification of the visitation rights pursuant to a March 7, 1977, order to show cause wherein he requested that he have an opportunity to bring the child to Utah on occasion for an extended visit and to have other specific times and places set for visitation. Appellant's requests were substantially denied and he was restricted to three (3) weekend visits a year to take place in California, until the child arrived at the age of five (5) years at which time he would be allowed summer visitation in Utah under certain conditions ordered by the Court.

ARGUMENT

POINT I

IT IS IN THE BEST INTEREST OF A CHILD TO ALLOW A DIVORCED PARENT GENEROUS VISITATION RIGHTS WHERE CUSTODY HAS BEEN AWARDED TO THE OTHER PARENT.

The right of a natural parent to visit his child is universally recognized and needs no extensive discussion. The Supreme Court of the State of Montana expressed this principle in Kane v. Kane, 165 P. 457 at 459, stating:

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> It must be borne in mind that the tie between parent and child is one of the most binding in human life, one which the law of nature itself has established. No legislation, no judicial interpretation of legislation, should lightly disregard the reciprocal duties of this relationship.

In Chase v. Chase, 15 U. 2d 81, 387 P. 2d 556 (1963), The Utah Supreme Court held that:

> The mother, of course, has the duty to cooperate in allowing defendant reasonable visitation privileges for the purpose of achieving the most favorable and happiest possible relationship for both parents (15 U. 2d at 81, 82.)

The Appellant submits that his right of visitation with his only child has been substantially denied by the order of the District Court entered April 7, 1977. Said order states, among other conditions, that visitation by the Appellant be restricted to three (3) weekends per year in the State of California until the child reaches five years of age. Because the father has no other resources, said visits would have to be conducted in the confines of a motel. Under the order, the father will have no opportunity to bring the child to his own home, or the home of the child's paternal grandparents for a period of two years.

(The paternal grandparents reside in Roosevelt, Utah as does the Appellant).

Appellant's purpose for bringing the order to show cause was so that the child might enjoy the love and companionship

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of the father and the child's paternal grandparents. Appellant sought to coordinate these visits while the child was still young so that he would not feel alienated from the father or paternal grandparents due to a long separation or irregular and brief visitations with them.

Appellant submits that the visitation rights prescribed by the District Court are not in the best interest of the child in"...achieving the most favorable and happiest possible relationship for the child with both parties" as anticipated by Chase v. Chase, supra.

This Court has previously held that divorce cases and proceedings involving the custody of children are equitable and therefore, the reveiwing Court may review the evidence and the facts as well as the law. Cox v. Cox 532 P 2d 994. Appellant contends that there is no basis in the facts or the law to impose such harsh and restrictive conditions of visitation.

Respondent has attempted in this case to use the Appellant's drinking habits during the final period of a troubled marriage as leverage to prohibit the Appellant from visiting the child on a more frequent basis. Appellant readily admits that immediately prior to the divorce of the parties he was drinking a great deal, although since the divorce and his re-marriage, drinking is no longer a problem. In any event, there is no evidence in this case to show that the

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Appellant has ever been drinking while exercising or attempting to exercise visitation rights with his son. The Appellant has complied strictly with the Decree of Divorce which requires him to properly demean himself and be sober at times of visitation.

In spite of living up to the requirements of visitation in every respect, the Appellant has been able to take his son overnight on only one occasion.

Appellant is concerned about the statement of the District Court that "...I can't anticipate a man taking care of a child not yet three years of age night and day for a weekend or so..." (Transcript, p. 12) Appellant cannot understand why the Respondent is allowed to bring the child from California to Utah at her own will and pleasure to visit her parents while he is denied the right to do so. Respondent has brought the child to Utah from California and the Appellant contends that he should be able to do the same. As the child's father, the Appellant submits that he and countless other men are perfectly capable of taking care of a young child for an indefinite period. Appellant recognizes that women may have the advantage in their ability to care for the young, but asserts that they have no monopoly on caring for children in today's society.

Appellant appreciates the Court's concern that the child not be "...shuttled back and forth..." from California

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But the Appellant submits that when the Court balances the inconvenience to the child in making the trip against the advantages of developing a father and son relationship that the scales must tip in favor of the father and son relationship. The three weekend visits per year in a motel in California are clearly inadequate to develop any meaningful relationship. Appellant simply does not agree with the Court's statement that "I can't agree that a child that age should be brought from California to Utah for visitation rights for as long as a month or any other time." (Transcript, p. 3. Emphasis added.)

Courts from other jurisdictions have held that a divorce decree allowing the father to have the visitation only two afternoons a month was an unreasonable limitation on parental rights. Lewis v. Lewis, 150 So. 729 (Florida, 1933). In Schell v. Schell, 241 N.W. 223 (Michigan, 1932) the Court held that a divorce decree awarding minor children to the husband and permitting the wife to visit them two Sundays each month from 2:00 to 5:00 p.m. was too harsh.

Appellant believes that the conditions of the order of visitation in this case are too harsh.

POINT II

IT IS IN THE CHILD'S BEST INTEREST TO HAVE AN OPPORTUNITY TO VISIT HIS PATERNAL GRANDPARENTS.

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U.C.A. Section 30-3-5 (1953) reads in part that "... Visitation rights of parents, grandparents, and other relatives shall take into consideration the welfare of the child." The Utah statute anticipates the visitation rights of grandparents. Because of the distance and cost involved, the paternal grandparents of the child in this case are effectively prohibited from visiting their grandchild for a two year period. In Scott v. Scott, 115 S.E. 2d (Georgia, 1922) the Court held that in a divorce where the wife was given custody of a minor child that the provision for visits by the child to her paternal grandparents was not an abuse of the discretion vested in the Court. In Benner v. Benner, 248 P. 2d 425 (California, 1952) the Court upheld a Superior Court order allowing visitation privileges to the natural grandmother of the child.

Specific visitation for the grandparents with their grandson were not requested but Appellant submits that it is in the best interest of the child to have regular visitation with them.

POINT III

GENEROUS VISITATION RIGHTS WITH THE FATHER CAN HELP AVOID SERIOUS PSYCHOLOGICAL AND SOCIAL DEVELOPMENTAL PROBLEMS IN THE CHILD

Research in psychological and social dynamics reveals

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a positive correlation between the amount of quality time shared by a young boy and his father, and the development of a normal psychological and social life of the boy. Obviously, a continuing relationship with the father and son under the marriage relationship is preferable. But in a situation of divorce where father and son are separated, developmental difficulties in the young boy can be prevented or minimized by generous visitation rights which permit the father to have his son with him in the father's natural environment on a regularly scheduled basis.

Research by Hetherington and Duer shows that in sex-typing (the process by which children acquire the motives, values, and behaviors which are characteristically regarded as masculine and feminine)

> ...the sex-typing process can be attenuated by paternal absence and that such disruptions in sex typing are more directly manifested in younger children than in older children, being most marked if the separation has occurred before the age of five.[1] (Hetherington and Duer, 1966).

The position by Hetherington, that the father-absent boys were less masculine if separations occurred before the age of five is supported by other scholars in the area of paternal depriviation. Notably, Henry B. Biller, indicated that father-absence, especially if it occurs early in the child's life, retards the development of a masculine

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sex-role identification.[2]

Further studies by Blanchard and Biller indicate that boys who are absent from their fathers at an early age are generally underachievers. Biller also gives evidence to support the fact that father-absent boys have less mature cognitive functioning and are certainly less likely to realize their intellectual potential. Biller further suggests that frequent exposure to a father who engages in cognitive tasks will help the boy have more self-confidence and determination to succeed.[3]

Stolz indicates that father absence can lead to personality disorders such as insecurity, anxiety and lack of confidence, particulary when a young boy feels that his father does not love him.[4] Studies also show that father absence contributes to behavior problems relating to school adjustment both academically and socially.

Research by Anderson,[5] Cervantes[6] and others definitely establishes that in the father-absent boys the crime commission rate is higher and there is a higher rate of recidivism and other delinquent behavior.

Numerous other case studies and research could be cited to show the effects of father absence. As has been pointed out, in a divorce situation where the father cannot be present on a continuing basis, the best alternative is to

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have a regular and frequent visitation with the boy and his father and it is important that said relationship begin at a young age.

In this case that father and son relationship has been excellent; there is no evidence to the contrary. The Appellant suggests that there is a great potential for serious psychological and social problems which may occur as a result of infrequent visitation with the boy. Not only is the visitation ordered by the District Court expensive for the father, but it is a hollow representation of what child authorities show is necessary for the proper development of the child: a sustained, positive relationship with the father who can act as a model for the boy. The boy needs to be in the father's home and natural environment to develop a positive relationship.

CONCLUSION

The District Court's order barring visitation except for three weekends per year is not in the best interest of the child. The Appellant does not understand why he cannot bring the child to Utah for at least one extended visit each year so that he can have an opportunity to develop a meaningful relationship with his son which will create a foundation for a lifelong positive and healthy relationship. The

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paternal grandparents also need to be able to visit their grandson and under the Court's order they are substantially deprived of that opportunity. Psychological and sociological studies show that it is important to the child's development to have a good father and son relationship commencing at an early age.

The Order of the District Court is too harsh. The Appellant respectfully requests that this Court modify that Order and allow him to bring his son to Utah for an extended visit at least once a year prior to the child's fifth birthday and to grant him additional visitation privileges that the Court would feel to be in the best interest of the child.

DATED this 20th day of July, 1977.

Kenneth G. Anderton
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CERTIFICATE OF MAILING

I hereby certify that on the 22 day of July, 1977, I sent a true and correct copy of the foregoing Appellant's Brief to Mr. Boyd Bunnell, Plaintiff-Respondent's attorney, at Suite #4, Oliveto Building, 23 South Carbon Avenue, Price, Utah 84501, postage prepaid.

Donna Haas, Secretary

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